IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2090 OF 2005

Ramchandra Shivram Naik)
38/1997, Gandhi Nagar, Bandra)
East, Mumbai-400 051.)..Petitioner

Vs.

1.Mr.Babu Nagappa Kaikadi)
residing at the premises of)
Maftlal Mill Unit No.3,)
Curry Road, Mumbai-400 012.)
2.Voltas International Ltd.,)
having their registered office)
at Voltas International House,)
28/82, NGN Vaidya Marg,)
Bank Street Lane,)
Mumbai-400 023.)
3.Commissioner for Worknen's)
Compensation Act and Judge of)
Tenth Labour Corut having)
his office at Administrative)
Building, Bandra East,)
Mumbai-400 051.)..Respondents

Mr. P.Z. Paulose i/b. Sanjay Udeshi & Co., for the Petitioner
Mr.L.S. Gaikwad, for respondent No.1.

CORAM: F.I. REBELLO, J.
DATE : 29th August, 2005
ORAL JUDGMENT:

1. Rule. Respondent No.1 waives service. Notice on respondent No.2 is dispensed with in view of the order to be passed. Respondent NO.3 is a formal party. Hence service on Respondent No.3 dispensed with. By consent heard forthwith.

2. The case of the petitioner is that as the matter proceeded exparte against them they had applied for recalling the order dated 28th December, 2001. That has been rejected by the respondent No.3 on the ground that the application is not maintainable. The learned Commissioner in so holding has held that there is no provision under the Rules framed under the Workmen's Compensation Act for setting aside the order made

exparte. What was pointed out before the learned Commissioner was Rule 32 of the Rules.

3. Rule 41 of the Central Rules made under the Workmen Compensation Act, 1923 provides that the provisions of Order 9 shall apply to proceedings before the Commissioners in so far as they may be applicable. Under Order 9 of the Code of Civil Procedure, is the power to proceed exparte. In other words, therefore, provisions of Order 9 Rule 13 would also be applicable in proceedings before the Commissioner for Workmen's Compensation.

4. Apart from that, in my opinion, the matter of procedural review is no longer res integra considering the judgment of the Apex Court in **Grindlays Bank vs. Central Government Industrial Tribunal and others AIR 1981 SC 606.** We may gainfully reproduce the following observations from the said judgment:-

> "But it is a well-known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties."

We may then refer to the following observations in paragraph 13:-

> "The expression 'review' is used in two distinct senses, namely, (1) a procedural review which is either inherent or implied in a Court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the Court in Narshi Thakershi's case held that no review lies on merits unless a statute specifically provides for it, obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every Court or Tribunal."

In Grindlay's Bank, the issue was whether the Tribunal

constituted under the provisions of the I.D. Act, 1947 had power to set aside an exparte award. That was upheld.

. Considering Rule 41 and the ratio in Grindlays Bank (supra), I have no hesitation in holding that there is power in the authorities under the Workmen Compensation Act to set aside the exparte order provided, of course, sufficient cause is shown.

. In the light of that the impugned order dated 16th February,l 2005 is set aside. The matter is remanded back to the respondent NO.3 for hearing parties afresh and thereafter to dispose of the same according to law. The entire exercise to be completed within four months from today. here shall be no order as to costs.

. Parties/Authorities to act on an authenticated copy of this order.

(F.I. REBELLO, J.)